

HOUSE BILL 1850
By Harwell

AN ACT to enact the "Tennessee Medical Review Panel
Act of 2005".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Tennessee Medical Review Panel Act of 2005".

SECTION 2. The purpose of this act is to provide an opinion of malpractice or lack of malpractice before filing in court a civil action against a health care provider or the provider's employees for professional liability.

SECTION 3.

(a) As used in this act:

(1) "Health care provider" means a physician, health care facility or any person employed by a health care facility who, in accordance with law or a license granted by a state agency, provides health care;

(2) "Malpractice claim" means any claim against a health care provider for alleged medical treatment, alleged lack of medical treatment, or other alleged departure from accepted standards of health care which results in damage to the patient;

(3) "Panel" means the medical review panel provided for under this act;

(i4) "Physician" means a physician licensed pursuant to title 63; and

(5) "Expert" means a person who demonstrates a minimum of ten (10) years of experience and practice in a medical field related to the claims of the claimant and will not financially benefit from the decision of the panel or court.

SECTION 4.

(a) The claim, answer, decision and all other pleadings required to be served under this act shall be served in accordance with the Tennessee rules of civil procedure.

(b) Computation of time periods prescribed or allowed under this act shall be in accordance with the Tennessee rules of civil procedure.

SECTION 5.

(a) There is created the Tennessee medical review panel.

(b) The panel shall have an executive director who shall be the attorney general and reporter, or the attorney general's designee, and shall conduct the administrative business of the panel and otherwise implement this act. The executive director may employ personnel or contract for services necessary to implement this act. The executive director shall promulgate such rules and regulations, in accordance with the uniform administrative procedure act, as may be necessary to implement this act.

(c) Members of the panel shall receive compensation while engaged in the business of the board of five hundred (\$500) dollars for each day the panel is convened plus two hundred dollars (\$200) per preparation day not to exceed one thousand dollars (\$1,000). Compensation for travel and other services shall be as provided for state employees.

SECTION 6.

(a) The panel shall review all malpractice claims against health care providers filed with the panel, except those claims subject to a valid arbitration agreement. No complaint alleging malpractice shall be filed in any civil court against a health care provider before a claim is made to the panel and its decision is rendered. The running of the applicable limitation period in a malpractice action is tolled upon receipt by the executive director of the application for review and does not begin again until thirty (30) days after the panel's final decision is served upon the claimant.

(b) Panel members are absolutely immune from civil liability for all acts in the course and scope of the duties under this act, including but not limited to communications, findings, opinions and conclusions.

(c) The panel may provide for the administration of oaths, the receipt of claims filed, the promulgation of forms required under this act, and the performance of all other acts required to fairly and effectively administer this act.

SECTION 7.

(a) Claimants shall submit a case for the consideration of the panel prior to filing a complaint in any civil court in this state by addressing a claim, in writing, signed by the claimant or his attorney, to the executive director of the panel. The claim shall contain:

(1) A statement in reasonable detail of the elements of the health care provider's conduct which are believed to constitute a malpractice claim, the dates the conduct occurred, and the names and addresses of all physicians and hospitals having contact with the claimant relevant to the claim and all witnesses;

(2) A statement, signed by the claimant, authorizing the panel to obtain access to all medical and hospital records and information pertaining to the claim and, for the purposes of its consideration of this matter only, waiving any privilege as to the contents of those records. Nothing in the statement may in any way be construed as waiving that privilege for any other purpose or in any other context, in or out of court;

(3) A statement, prepared and signed by an expert in the field of medical practice in which the health care provider practices, setting forth the basis for the expert's belief that the conduct is believed to constitute a malpractice claim, and the evidence to support the expert's opinion.

(b) The claim may be amended by filing an amendment not less than fourteen (14) days prior to the hearing date.

(c) Upon receipt of a claim, the executive director shall cause a true copy of the claim to be served on the health care provider against whom the claim has been filed.

(d) The health care provider shall answer the claim within thirty (30) days after service and shall submit a statement authorizing the panel to inspect all medical and hospital records and information pertaining to the claim except those records which are privileged pursuant to law. The answer shall be filed with the executive director who shall serve a copy on the claimant.

SECTION 8.

(a) The panel for each claim reviewed under this act shall consist of two (2) health care providers licensed in this state and one (1) attorney licensed in this state. All panel members shall be residents of this state. If feasible, the two (2) health care provider members of the panel shall be from the health care provider's profession or specialty.

(b) Within five (5) days of receipt, the executive director shall notify the state licensing agency of the health care provider involved of the filing of the claim and the supreme court. Within fourteen (14) days of notification, the state licensing agency and supreme court shall provide the director a list of twelve (12) of their licensees as proposed panelists. To the extent possible, the state licensing agency shall include on the list persons specializing in the same field or discipline as the health care provider against whom the claim is made. The executive director shall select two (2) from the list of health care providers and one (1) from the list of attorneys to serve as panelists and shall notify the parties and the panel members selected of their selection.

(c) At or prior to the hearing, the panel shall select a chairman from among its members. The chairman shall preside over the panel proceedings.

(d) If, within fifteen (15) days of receipt of the notice of selection of the professional panelists, the claimant or the health care provider against whom the claim is made files an affidavit stating his belief that a panelist selected by the director cannot be impartial in reviewing the claim, then the panel member is disqualified, and the executive director shall select another from the list. Each party may disqualify not more than three (3) panel members pursuant to this subsection.

(e) The executive director may excuse a panelist from serving if the panelist feels his or her presence on the panel would be inappropriate under the circumstances of the case.

(f) When a claim is filed against two (2) or more health care providers, the claim against each health care provider shall be consolidated for hearing unless by stipulation of all parties or at the discretion of the panel, the claims are heard separately.

SECTION 9.

(a) The executive director shall set a time and place for the hearing and provide notice to all parties at least thirty (30) days prior to the hearing. The proper place for hearing shall be the county in which the civil action would be brought. The hearing date shall not be more than one hundred twenty (120) days after the executive director receives the claim unless the director or panel finds good cause to delay the hearing. At least fifteen (15) days before the hearing the executive director shall provide each panel member copies of all claims, briefs, records and other documents the director considers necessary.

(b) The hearing shall be conducted in accordance with rules and regulations promulgated by the executive director. The hearing shall be informal, and the

Tennessee rules of evidence shall not apply. No decision of the executive director or the panel is subject to review in a court. A record of the hearing shall be made. The panel may not call witnesses.

(c) The panel may take the case under advisement or may request that additional facts, records or other information be obtained and presented to it at a supplemental hearing, which shall be set for a date not later than thirty (30) days from the date of the original hearing unless the claimant or his attorney consents in writing to a longer period.

SECTION 10.

(a) Upon consideration of all the relevant material, the panel shall determine whether there is:

(1) Substantial evidence that the acts complained of occurred and that the acts constitute malpractice; and

(2) A reasonable probability that the patient was injured as a result of the acts complained of.

(b) The deliberations of the panel are confidential. All votes of the panel on the questions for discussion shall be by secret ballot. The decision shall be by a majority vote of the panel and shall be signed by the chairman. The executive director shall not cast a vote.

(c) The decision, including a majority opinion, shall be in writing and forwarded to the executive director who shall serve copies on the parties. A copy of the decision shall be sent to the health care provider's state licensing agency. If a claim is filed in a court of competent jurisdiction, then a copy of the decision must be filed by the claimant with the complaint upon filing of that claim and shall be deemed admissible evidence in court.

(d) The panel's decision is not binding upon any party.

SECTION 11.

(a) The executive director shall maintain records of all proceedings before the panel, which shall include the nature of the act or omissions alleged in the claim, a brief summary of the evidence presented, the decision of the panel and any majority or minority opinions filed.

(b) No panel member may be called to testify in any proceeding concerning the deliberations, discussions, decisions and internal proceedings of the panel.

SECTION 12.

(a) The panel shall be funded from assessments levied against and paid by each health care provider licensed in the state. The executive director shall promulgate rules in accordance with the uniform administrative procedure act to annually establish appropriate assessments based on the following guidelines:

(1) The total amount of the panel's proposed annual budget shall be prorated among all health care providers licensed in the state based on the number of cases reviewed by the panel during the immediately preceding calendar year;

(2) The first four (4) annual assessments for each resident practicing provider shall be equal to one and one-fourth (1 1/4) the assessment determined pursuant to subdivision (1) of this subsection. Thereafter annual assessments shall be in the amount determined pursuant to those paragraphs.

(b) The executive director shall certify the amount of each assessment to the appropriate licensing board, agency or authority, and the board, agency or authority shall levy and collect the assessments annually at the same time as annual license fees are collected. Assessments collected under this subsection shall be remitted to the executive director not later than thirty (30) days from the date of collection and paid

immediately by the director to the state treasurer for deposit in an account, to be known as the medical review account, within the earmarked revenue fund.

(c) Monies in the medical review account shall be expended by the panel to carry out the purposes of this section.

SECTION 12.

(a) If a claim is filed in a court of competent jurisdiction, then a copy of the panel's decision must be filed by the claimant with the complaint upon filing of that claim and shall be deemed admissible evidence in court.

(b) In any case proceeding in a court of competent jurisdiction filed after review by a panel under this act, a claimant may not submit the expert opinion of the same expert used to provide the expert opinion required by this act.

SECTION 13. This act shall take effect January 1, 2006, the public welfare requiring it, and shall apply to alleged acts of medical malpractice occurring on or after such date.